

# JUSTICE AMONG NATIONS

[FIRST MERTTENS LECTURE ON WAR AND PEACE]

# JUSTICE AMONG NATIONS

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## PREFATORY NOTE

THE *Merttens Peace Lectures* were founded in 1926 by Frederick Merttens of Rugby. They are delivered annually and circulated in book form.

# JUSTICE AMONG NATIONS

THE thesis of my lecture is this: Much of the evil we suffer in the world to-day arises from a false conception of the nature of justice. I want to consider, then, what justice really is; what is its value for us in the modern world; and, especially, how it can be applied to our international problems.

## I. THE IDEA OF JUSTICE

Justice would seem to be one of those terms that are applicable only in a state of society in which men are conscious of their social relationships, and give thought to them. It is, in fact, a concept of political philosophy and of political science, and it can hardly be said to exist outside these bounds. I do not propose, at any rate, to consider how universally or how variably the idea of justice may lurk in the minds of primitive peoples, but to confine myself to what we commonly regard as civilised society.

The classic discussion of justice is in Plato's *Republic*. There let us begin our modern discussion. At the beginning of the dialogue we are given a definition of justice that is attributed to Simonides: "The restoration to each of what is

## *JUSTICE AMONG NATIONS*

due to him." Socrates finds this a fair definition, but much depends on the word "due." Is it just to do good to good men and evil to bad men? Socrates thinks not, for the latter process will only make the bad men worse. He utterly rejects the view of the cynical Thrasymachus, that justice is a fine name given by the strong to their coercion of the weak; and, responding to the appeal of Glaucon and Adeimantus, he tries to show that the practice of justice, even when unrecognised, gives truer happiness than a mere reputation for justice. In attempting to prove this, Socrates comes back to the view that justice is to be found in a community where those best fitted to rule, those who understand best and care most for the good of the community, are entrusted with authority, where all other members of the community perform the functions for which they are best suited, and where all have their essential needs satisfied. Justice is established, in fact, in a harmonious community; and the most important element in such a community must be the philosophic rulers who, knowing that wisdom is more to be desired than honour or wealth, find their happiness in serving the community, without looking for any reward other than what they find in their work, but with the added hope of gratitude from men and the assurance of peace after death. Socrates, in effect, seems to put great emphasis on the active side of the original definition, and little on the passive. The important thing is that the rulers, or Guardians, should have the knowledge

## JUSTICE AMONG NATIONS

and will to serve the community, not that every member of the community should have the right to insist on being served. We shall not find justice by demanding what we conceive to be our due; but by devoting ourselves to "restoring" to others what is due to them.

Turning from Greece to Judæa, we find that some of the Hebrew prophets had almost the same thought of justice. The word translated righteousness in the Old and New Testaments is, in the Greek text, the same word that is elsewhere commonly translated as justice. It is a word suggesting conformity to God's law. Whereas Plato was thinking chiefly in terms of human society—a harmony of man with man—the prophets of Israel put first the thought of harmony between man and God. But they were in no sense otherworldly. Righteousness had a civic application, and the prophets were not afraid to make it. In general terms, we find the duty of man summed up in the great appeal: "What doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God?" The prophet does not say exactly what he means by justice, but it is plain enough from the words that follow that he cannot be thinking of a harsh ruthlessness that would be the very antithesis of mercy. Perhaps we may suppose that he meant by his "do justly"—if you have, wittingly or unwittingly, done any man injury, seek by every means to atone for the injury; and by "love mercy" he perhaps intended to say: If

## *JUSTICE AMONG NATIONS*

any other man has done you an injury, forgive him; return kindness for unkindness.

Thus, the pre-Christian teachers of the West, Greek and Hebrew, thought of justice as closely akin to mercy, and as something that would develop the good in man, and bring him into harmony with his fellows and with God.

Is this the view of justice that is commonly accepted in the world to-day? I cannot think so. Rather, we of the Anglo-Saxon nations, at least, have founded our idea of justice on the old Mosaic law, and on what we suppose to be the law of nature. When a crime has been committed society must execute penalties upon the criminal, or exact recompense. The rule of "an eye for an eye and a tooth for a tooth" is still upheld. We do not "turn the other cheek"; still less do we go out of our way to show kindness to those who have maltreated us; we do not go the second mile. And in our ruthless treatment of criminals we seem to be following nature. Nature does not give those who violate her laws a second chance. The laws of nature admit of no favouritism. True, of three men who fall over a cliff, one may break his neck, the second only a leg, and the third, having his fall broken by a bush, may escape with a few bruises. But this is because the circumstances of the three cases were not identical. It was due to no partiality of nature. The law of gravitation worked equally in each case. The good gifts of nature are showered upon us with equal impartiality. And this impartiality com-



## *JUSTICE AMONG NATIONS*

mends itself to the human reason; we find that people live more contentedly together if they feel sure that the law will treat them alike. But this need not mean that all law-breakers are to be ferociously punished. We are not involved in the question of mildness or severity; all that we have here is the idea of equality—what is technically called “equality before the law.” To us Anglo-Saxons this principle of equal treatment for equal circumstances seems highly important, and of the very essence of justice. But it is difficult to apply it satisfactorily; for, as it happens, the circumstances hardly ever are equal.

The idea of justice has probably been influenced for us by Roman ideas more than by Greek or Hebrew thought; and to the Romans justice was primarily a term in law, or rather, perhaps, in jurisprudence. This aspect of justice we must now consider.

But, first, what do we mean by law? I have already referred to natural law and divine law; these are expressions used to cover what, on the one hand, we know from observation and experiment to be the principles that rule in the natural world—animate and inanimate; and, on the other, the principles that those who believe in God suppose to be in accordance with His will. Social law is another thing; it consists of those rules of conduct which are accepted as binding by a given body of men, who are thus organised into a social group, whether it be a family, tribe, nation, or, perhaps soon, the whole human race. It may be

## *JUSTICE AMONG NATIONS*

sanctioned by general opinion, by ancient usage, by the authority of some potentate, or of a priesthood, or a parliament. It may be written or unwritten. It is in this sense that I am now speaking of law.

There are some who seem to think that all such law is an intolerable restriction, from which we are set free by Christ—in fact, as Paul said, that we have come out of law into grace. It looks as if Paul had found the Mosaic law a dreadful bondage; and it has to be remembered that ancient law was supposed to be immutable; even to-day, when we make ample provision for its amendment, it does, in fact, commonly lag behind public opinion; but that is not of its essence; when it happens, it proves that some part of the law needs revision. Law is, in fact, not a mere list of restraints of anti-social conduct, but a formal expression of the corporate moral sense of the community, growing and developing as that sense or conscience grows. I would even venture on the paradox that the man who has the greatest reverence for moral order is most likely to experience romantic spiritual adventures; in fact, self-discipline is the true way to self-expression; we may recall the phrase in the Prayer Book, “whose service is perfect freedom.” Those who think ill of law and lawyers (and the lawyers themselves) might recall the saying of Ulpian, that the lawyers are “priests of Justice, engaged in the pursuit of a philosophy that is truly such and no counterfeit.”

## JUSTICE AMONG NATIONS

This may seem to be somewhat mystical language for such a precise realm of learning as jurisprudence. Locke's definition of law is perhaps more illuminating, and almost as warmly expressed: "Law, in its true motion, is not so much the limitation as the direction of a free and intelligent agent to his proper interest, and prescribes no further than is for the general good of those under the law . . . so that, however it may be mistaken, the end of the law is, not to abolish or restrain, but to preserve or enlarge freedom." Both these quotations are given by the late Sir Thomas Erskine Holland in his famous work on *Jurisprudence*; and he himself adds: "Law is something more than police. Its ultimate object is no doubt nothing less than the highest well-being of society; and the State, from which law derives all its force, is something more than . . . (an) 'institution for the protection of rights.'"

We may, perhaps, say that a community or State that was living "under grace" would still have a law, but would have no police to enforce it. As Holland also says: "Rightness of will can never be enforced."<sup>1</sup>

Probably the fullest recognition of the supre-

<sup>1</sup> It seems only fair to the police to point out that, in England to-day, their main work consists, not in arresting criminals, but in directing traffic and protecting children and old ladies from motor cars. In Germany the police are regarded as the friends and protectors of all those who are friendless or who need protection.

## JUSTICE AMONG NATIONS

macy of the idea of justice in the realm of law is to be found in the doctrine of equity. In the development of both Roman and English law this doctrine has been of immense importance. It is thus described by Holland: "As old rules become too narrow, or are felt to be out of harmony with advancing civilisation, a machinery is needed for their gradual enlargement and adaptation to new views of society. One mode of accomplishing this object on a large scale, without appearing to disregard existing law, is the introduction, by the prerogative of some high functionary, of a more perfect body of rules, discoverable in his judicial conscience, which is to stand side by side with the law of the land, overriding it in case of conflict, as on some title of inherent superiority, but not purporting to repeal it. Such a body of rules has been called 'equity.' It consists in reality of such of the principles of received morality as are applicable to legal questions, and commend themselves to the functionary in question." In England the rules of equity are no longer open to judicial development; equity itself has become fixed; and when a change is needed a new law must be passed by Parliament—a process now much easier than it once was. But it is still true that many laws become obsolete without being repealed; the community has outgrown them.

If we consider the accepted law of a community as the practical expression of its existing idea of justice, we may now recognise, I think, that the true idea of legal justice corresponds very closely

## *JUSTICE AMONG NATIONS*

with the ideas of moral and political justice already described. From every point of view justice is seen to be a living principle expressing man's ever-changing, and, let us hope, ever-growing, ideal of a community harmoniously organised.

But, as we have seen already, the popular idea of justice falls a good deal short of this. We think of it not so much as a principle of growth, encouraging welfare, but as cold, impartial, often ruthless, regardless of human passions and frailties. And, even so, our practice, especially in international intercourse, falls far short of our theory. International practice hitherto has been by no means impartial. It is of particular importance to examine the application of justice in international affairs; for Plato and most later writers on political philosophy have almost ignored this side of social activity. However fully they may have recognised the unity of interest that bound those of the same State to one another, they seem to have thought that the external relations of a State consisted in war or nothing. States were assumed to be by nature enemies of one another. In Plato we may call this a pardonable blind spot; but that the liberal thinkers of the nineteenth century should have had the same defect is inexcusable, for in their time science and art, literature and religion, trade and steam had made the whole world one. Their omission of international relations shows them, indeed, not to have had a blind spot only, but to have been short-sighted. And to some extent they must on

## JUSTICE AMONG NATIONS

this account accept responsibility for the war of 1914 and our present international difficulties.

### II. UNIVERSAL JUSTICE

I propose now to sketch the development of international justice, as affecting both individuals and States, first in the light of the idea of equality or impartiality, and then to see how far the idea of justice as a principle of harmonious social development is beginning to influence our thought and our policy.

In the early Roman Empire the Roman citizen had legal privileges that were denied to the conquered peoples; but later, under the influence of Stoic philosophy and Christian thought, what had been the inferior *ius gentium* (the law common to all peoples) took precedence. This means, practically, that the later Roman jurists recognised that what was accepted as just among all the peoples within the Roman Empire ought to be regarded as the supreme law. Particular systems of law, even that developed by Rome herself, must be subordinate.

During the Middle Ages it was assumed that everyone in Christendom was subject to the same law; in practice, the lower orders of feudalism could not often assert any rights as against their overlords; but the conception of a single law, derived partly from the old *ius gentium*, partly from the Stoic conception of *ius naturale* (the law of nature)<sup>1</sup> and expressed in the civil law, and still

<sup>1</sup> This "law of nature" was, of course, something quite different from what we to-day mean by "laws of nature." It meant practically what we should call "moral law."

## JUSTICE AMONG NATIONS

more in the canon law of the Church, lived on and counted for something. Chivalry counted for something too, even in the contact of Christians with Saracens.

But when a new non-Christian world in Asia, Africa, and America opened before the gaze of Europe in the fifteenth and sixteenth centuries, cupidity stalked over those continents unchecked. To quote Lord Acton: "The Portuguese acknowledged no obligations of international law towards Asiatics. Even now, many people know of no law of nations but that which consists in contracts and conventions; and with the people of the East there were none. They were regarded as outlaws and outcasts, nearly as Bacon regarded the Spaniards and Edmund Burke the Turks. Solemn instruments had declared it lawful to expropriate and enslave Saracens and other enemies of Christ. What was right in Africa could not be wrong in Asia. Cabral had orders to treat with fire and sword any town that refused to admit either missionary or merchant. Barros, the classic historian of Portuguese Asia, says that Christians have no duties towards pagans; and their best writers affirm to this day that such calculated barbarities as they inflicted on women and children were justified by the necessity of striking terror."<sup>1</sup> Spanish writers of the sixteenth century seem to have advanced one stage from this; they admitted some rights to pagans, but utterly denied any to heretics.

<sup>1</sup> Acton, *Lectures on Modern History*, p. 59.

## *JUSTICE AMONG NATIONS*

Pagans, they said, knew no better; the light of Christ had not reached them; but heretics were sinning against the light. In practice, it is to be feared that the Spaniards often destroyed the pagans of South America as ruthlessly as the heretics of the Netherlands. It was against such restrictions of justice that Gentilis and Grotius, the founders of modern international law, set themselves. It is significant that both these great men were heretics, and both suffered for their faith. Grotius, the Dutch patriot, championed the right of all peoples to trade freely over the high seas; and he asserted that the inhabitants of Asia and Africa were the lawful owners of the lands in which they lived, and had the right to trade with whom they liked. His great work, written as it was when he was an exile from his country, was a protest against the barbarities of the war in the Netherlands, and a vindication of the moral law as between all peoples, whether Catholic or Protestant, Christian or Pagan.

It is, however, a great misfortune that Grotius and his successors spent so much of their energy in attempting to restrain the barbarities of war. For a time they achieved some success; but in the nineteenth century scientific discovery let loose new horrors, whose use no international convention has been able to prohibit. It is a melancholy fact that the greatest efforts to humanise war coincided with the most prodigious extensions of its ravages. We know now what our choice is. The next great war would involve



## *JUSTICE AMONG NATIONS*

universal destruction by air-bomb and poison gas. Law has "humanised" war for the wounded and prisoners, but it has been powerless to prevent the use of the most destructive weapons. In this generation we shall do well to concentrate on the abolition of war, not to waste time attempting to restrict it. This, however, is by the way. Our debt to Grotius is great in spite of it.

In the early days of our Empire, British traders and their Government behaved little better than Spaniards or Portuguese. The British Government fought for and obtained the monopoly of the slave-trade between West Africa and America. In North America the Indians were regarded as natural enemies, except in Pennsylvania and one or two other colonies. By the end of the seventeenth century the religious reasons for denying rights no longer counted for much, but the economic motive of exploitation was as strong as ever. How far "race feeling"—the aversion from men of another colour—also contributed to the subordination of coloured peoples in the seventeenth and eighteenth centuries I cannot say.

The "enlightenment" of the eighteenth century, followed by the evangelical revival, provided a basis for the first great attack on this attitude to the "heathen" of Asia and Africa. In the nineteenth century the status of British citizens underwent a change similar to the change that took place in the Roman Empire. Slavery went, religious disabilities were removed, and other

## *JUSTICE AMONG NATIONS*

great steps were taken towards the political and social equality of all citizens of the Empire.

The economic imperialism of the nineteenth century, however, produced fresh barbarities in the Congo and on the Putumayo, no less horrible than the crimes of the early Portuguese and Spanish conquerors. The attempted justification by a section of British opinion of the Amritsar massacre shows that the Old Adam of racial dominance is still alive in our midst. Indeed, to-day we are faced with great reactionary forces. Economic and racial antagonism, fostered by ignorance and fear, seem to be undermining the nineteenth-century doctrine of the legal equality of British citizens. Just when we have almost achieved sex equality in the exercise of the franchise in Great Britain, following a good way behind some of the self-governing Dominions, the African race, and Asiatics too, are excluded from the franchise in South and East Africa. The land, which is the basis of economic power in Africa, is being taken from the Africans in some territories, and ever larger areas are being assigned to white men. And now, too, the privileged white men are trying to secure their position by giving military training to all white men, and denying it to Africans and Asiatics. Australians prevent Asiatics from helping to open up their continent. Whatever may be said in extenuation or explanation of these policies, they are not just, in the sense in which the word justice is usually understood. They deny the equal status of all citizens.

## *JUSTICE AMONG NATIONS*

Perhaps when people talked a generation ago of the equal status of all British citizens, they had not quite appreciated what it might mean. They had little sense of the economic conflict of races that has arisen since. The white people were so manifestly predominant, in fact, that the possibility of Indians or Africans undermining their economic position and outvoting them in political elections hardly entered into their thoughts. But now, at any rate, we know where we stand. And if the privileged race is going to insist on upholding its privileges, either we must revise our idea of justice, or we must confess that it is not applicable to all men.

### III. JUSTICE AMONG NATIONS.

The issue has to be faced, not only in the racial antagonisms within our own Empire or in the United States, but also in the relationships of the various States to one another. How do law and justice stand here? The legal equality of States is an accepted maxim of international law; but is it accepted in practice? To pretend that each of the tiny Central American Republics, which would long ago have federated into a larger State if they had been capable of any active political life, could ever exercise as much influence in the world as the United States, or the greater South American Republics, is, of course, ludicrous; and when at the Hague Conference of 1907 the Brazilian delegates led the little States in rejecting the proposal for an International Court of

## *JUSTICE AMONG NATIONS*

Justice, because there was not to be equal representation, or an equal rotation, among the judges, they were giving a foolish and impossible interpretation to the doctrine of equality. Equality does not mean equal authority or influence; primarily it means equality before the law; it means, for example, that if international law says that any State threatening war is to be summarily dealt with by the Council of the League of Nations this must be applied not only to Greece or Abyssinia, but equally to Italy or Great Britain. But it means rather more than this. It ought to mean that a representative of Switzerland or Bulgaria or China is treated in international conferences with the same respect that is accorded to the representative of France or America. If he makes reasonable proposals, although he has no military or economic force to back them, they should be accorded more weight than the unreasonable proposals of the representative of a Great Power. It is to be feared that this is not yet the practice of our diplomats. I am afraid the representatives of Bulgaria or Albania or Roumania are not regarded as equals. They are still thought to be rather barbarous. A Balkan member of the League of Nations Secretariat, after he had been there for some months, is said to have observed that he had not known before he came to Geneva that if you came from the Balkans you could not be a gentleman. If that is the atmosphere of Geneva, what must it be in Paris and London and Washington? And there seems

## *JUSTICE AMONG NATIONS*

to be abundant evidence that the Chinese are still supposed by a good many of our diplomats to be complete barbarians, or to belong to an inferior species. It is true that they sometimes regard us in much the same way. There seems to be no impartial umpire to decide which of us has the better justification. Further, the Corfu incident showed that the Italian Government did not consider that the same law applied to a Great Power like Italy as to a small State like Greece. The unequal treaties with China provide another example of this old, bad tendency to treat weak States and their representatives as inferiors.

Diplomatic practice is important, but sometimes a Government can advance beyond the traditional habits of its diplomats. Our Government now shows quite a lively interest in the activities of the League of Nations, though one suspects that most of our older diplomats still regard that organisation coolly. In the League of Nations Assembly, at least, the principle of State equality is often a reality ; the little States have really only themselves to blame if their representatives allow themselves to be cajoled by the Great Powers. In the League Council, however, the Great Powers are still struggling for dominance; and the struggle has lately been carried on so publicly as to become quite an indecent exhibition. The events of the past year have driven me to the conclusion that the League Council will never function satisfactorily until the Great Powers are ready to agree that the whole Council shall be

## JUSTICE AMONG NATIONS

elected by free vote, on a proportional basis, in the Assembly. There must be mutual confidence between great and small States if the world is to live in harmony; and that will only come when the Great Powers trust their smaller neighbours to elect a world council that will be able to deal effectively with the questions it may have to face. Are the smaller States yet worthy of that trust? I think they are.<sup>1</sup>

But there are other ways in which the Great Powers can prove their disinterested belief in international justice. They have helped to establish a real International Court of Justice; that is a great step forward; but they have not committed themselves unreservedly to the jurisdiction of the Court. Several reasons are given for this hesitation to accept the jurisdiction of the Court at the Hague. The chief of these is that, until international law is more certain and more fully developed, it is hardly possible to submit oneself to such an uncertain jurisdiction. To estimate the soundness of this argument, some further account must be given of the development of international law, and especially of the growth of the practice of arbitration.

Jurists have argued about the reality of international law for generations. Some have claimed that it is hardly law at all, and that it has no

<sup>1</sup> This solution would not, it is true, be democratic; a system that would give China and Nicaragua equal voting power cannot be so described. But I think it is the right solution to aim at, because it presupposes mutual confidence.

## JUSTICE AMONG NATIONS

binding value. Professor Holland, for example, describes it as "the vanishing-point of jurisprudence, since it lacks any arbiter of disputed questions, save public opinion . . . and since, in proportion as it tends to become assimilated to true law by the aggregation of States into a larger society, it ceases to be itself, and is transmitted into the public law of a federal government." The latter point need not trouble us much, for it seems to be chiefly a question of the name to be given to a certain kind of law. It does not seem to matter very much whether we speak of "international law" or of "superior federal law"; the latter, perhaps, would more exactly describe the stage of development we are now reaching; if so, there is nothing to regret. But the first objection seems to be more serious. Holland speaks of the lack of an impartial arbiter; more commonly, we are reminded that international law is rarely subject to enforcement. It can be broken, we are told, with impunity. But, admitting for the moment that there is some truth in these allegations, do these things invalidate its claim to be regarded as true law? I cannot think so. Holland says that there is no arbiter save public opinion. But what better arbiter could there be? Is not public opinion the final arbiter of all law?<sup>1</sup> A strong government, backed by a loyal police force, may for a time enforce an unpopular law, but not for ever. Sooner or later public opinion will assert itself. Under the Treaty of

<sup>1</sup> Cf. MacIver, *The Modern State*, Book II, chap. viii.

## JUSTICE AMONG NATIONS

Versailles half a dozen men were sent to govern over 700,000 in the Saar basin against the will of the 700,000. They found they could do nothing without the aid of French troops. Such a situation gives no foundation for an enduring and effective law. In India we are assured by Indians as well as Englishmen that the continuance of British rule has been due, hitherto, to the general consent of the governed. If that consent is withdrawn, Government must soon break down. We saw this happen in Ireland a few years ago. In a sense it has also happened in Egypt.

The real defect in international law has been not that public opinion was the only arbiter, but that public opinion has been so feeble and uncertain. World opinion has not grown to the point of expressing itself unitedly and decisively on most issues. In particular, it has only just begun to provide itself, in this sphere, with a systematic code of law, or with courts of justice, things which experience has shown to be practically necessary for the proper expression of public opinion.

The truth seems to be that many of the writers of the last generation had a false idea of the whole nature of international law. It was, to them, almost wholly a matter of rights. They were blinded by their conception of sovereignty, in the sense of self-sufficiency; this was false to the facts of the nineteenth century, and is still more false to-day.

The old treatment of international law would almost drive a Martian visitor to this planet to suppose that States had no relationships with



## JUSTICE AMONG NATIONS

each other except when they or their neighbours were at war, unless in certain matters of ceremony. Five hundred years ago there was some justification for such a view of the world. To-day there is none. Thus, in Grotius' time, many wars between neighbouring States continued year after year, even generation after generation, with no more than five or ten years' truces. And even in so-called peace time the chief issue involved in the discussion of a matter like the Freedom of the Seas was the claim of the rising maritime nations to sail their ships wherever they chose on the high seas. This right was for long actively denied by the Portuguese and Spaniards. To-day it is unchallenged. The case so ably argued by Grotius has been long since decided in his favour by general consent. To-day maritime law is concerned not with rights but with duties. The ships of all nations, instead of being "natural enemies," belong to one fraternity; they still engage in commercial competition; but instead of sinking one another at sight they accept the positive duty of going to one another's aid, without regard to nationality, and regardless, too, of delays and other inconveniences. Curiously enough, the duty of assistance, still without regard to nationality, is specially incumbent upon ships of war. The lion is expected to feed the lamb. A hundred years ago the sea was free to all ships that refrained from piracy. To-day it is free in peace time to all ships that accept the positive duties of international maritime law. I

## *JUSTICE AMONG NATIONS*

am not here concerned with the debated topic of the freedom of the seas in time of war.

This is but one example of the change that has taken place. Before the war, text-books on international law still devoted their sections on the law of peace mainly to such subjects as international persons, state territory, nationality, diplomatic envoys, negotiations and methods of treaty-making. The positive content of law received too little attention. Yet a change was already beginning. Professor Oppenheim in the second edition of his work, published in 1912, devoted a few pages in his discussion of maritime law to such things as fisheries, telegraphic cables, and the new rules of radio-telegraphy between ships at sea. He also gave nearly fifty pages to the treaties and conventions of such bodies as the Universal Postal Union, the Union for the Protection of Works of Art and Literature, the Union for the Protection of Industrial Property, the International Institute of Agriculture, the International Office of Public Health, and many other official bodies of the same nature.

And he summarises the whole in a notable passage: "Innumerable are the interests," he writes, "which knit all the individual civilised States together, and which create constant intercourse between the States as well as between their subjects. As the civilised States are, with only a few exceptions, Christian States, there are already religious ideas which wind a band around them. There are, further, science and art, which are by

## *JUSTICE AMONG NATIONS*

their nature to a great extent international, and which create a constant exchange of ideas and opinions between the subjects of the several States. Of the greatest importance are, however, agriculture, industry, and trade. It is totally impossible, even for the largest empire, to produce everything its subjects want. Therefore, the productions of agriculture and industry must be exchanged by the several States, and it is for this reason that international trade is an unequalled factor for the welfare of every civilised State. . . . Though the individual States are sovereign and independent of each other, though there is no international Government above the national ones, though there is no central political authority to which the different States are subjected, yet there is something mightier than all the powerful separating factors—namely, the common interests, and these common interests unite the separate States into an indivisible community.” Similarly, Dr Lawrence: “Commerce, intermarriage, scientific discovery, community of religion, harmony in political ideas, mutual admiration as regards achievement in art and literature, identity of interests or even of passions and prejudices, all these, and countless other causes, tend to knit States together in a social bond analogous to the bond between the individual man and his fellows.” Such passages are, however, exceptional.

Infact, the Governments that established Unions and accepted Conventions to facilitate this intercourse were laying the foundations of a vast system

## JUSTICE AMONG NATIONS

of public law for the world. And this was law in its best sense; a law, that is, not of restraints and penalties for wrong-doing; but a law to facilitate intercourse and development: a law that acknowledged the essential unity of all, and their need of smooth, regulated, systematic means of co-operation.

Since the war, this body of law has been very rapidly developed. Professor Philip Baker has recently pointed out<sup>1</sup> that the League Covenant itself marks a great development of Constitutional Law; the numerous Conventions of the International Labour Office, the new Opium Conventions, agreements for the suppression of the traffic in women and children, the suppression of slavery, and other new Conventions, mean a great development of Social Law; and the new Transit Conventions, and other new agreements, involve an important extension of Commercial and Technical Law. In fact, the League of Nations and its technical commissions are developing international law at a great speed—a speed which is made absolutely necessary by the increased interdependence of the world. As Professor Brierly has recently expressed it: “The problem of restoring an active principle of growth to international law is insistent.”<sup>2</sup> One of the many political advances that our generation owes to Scandinavia is the appointment by the League of a committee to consider whether, or how far, the codification of international law is possible or

<sup>1</sup> *British Year-Book of International Law*, 1924, pp. 52–58.

<sup>2</sup> *Loc. cit.*, pp. 4–16.

## JUSTICE AMONG NATIONS

desirable. This committee, which has been at work for two years, is examining the present position in respect to several sections of maritime law, diplomatic privileges and immunities, extradition, nationality, and some other departments of international law. It is likely soon to make recommendations for the acceptance by the world of states of conventions or laws on some of these matters.

All this shows that the old idea of sovereignty is dead in fact, and ought to be rooted out of our minds.<sup>1</sup> Professor Brierly questions such a fundamental axiom as this, quoted from Dr Lawrence: "The first rule we will lay down is that a State has jurisdiction over all persons and things within its territory." Actually, as Professor Brierly points out, States to-day are constantly insisting on intervening in their neighbours' affairs. They insist on the paramount claims of humanity. Perhaps the most decisive step in this direction was taken when the Great Powers in 1878 refused to recognise the Balkan States unless they agreed to give guarantees for the good treatment of their minorities. The same condition has been applied to a number of States that have been admitted to the League of Nations; and under the supervision of the League it is no longer a dead letter. The Great Powers, it is to be noted, refuse to be bound by this obligation—another example of inequality. Conditions of labour in China or

<sup>1</sup> "Modern sovereignty," writes Mr Delisle Burns, "is the power of a State to function in regard to other States." *Year-Book of International Law*, 1926, p. 71.

## JUSTICE AMONG NATIONS

India or Africa are admittedly now the concern of the whole body of States; whilst conditions in Germany, France, Belgium, or England are of vital concern to all their neighbours. The International Opium Conventions seem to involve the recognition of the right of world opinion to control raw materials. The economic policy of States is coming to be recognised as a matter of general concern. As Professor Brierly says: "[The principles of international law] can be found by examining what it is that States to-day regard as just, equitable, convenient, reasonable; they cannot be deduced from what they so regarded a century ago; and still less from any pseudo-metaphysical notions of what the essential qualities of Statehood ought to be." The relation of States to one another is not immutable; it is vital, and rapidly changing; and international law must change and develop in harmony with the development of international society. The change is taking place, but jurists have been slow to recognise it.

International lawyers in the nineteenth century, especially in this country, rejected the old view that international law was derived from the law of nature; they argued that the only true law was what could be shown to be such by examining the customary behaviour of States to one another. This tendency was, on the whole, a thoroughly healthy one; so long as States could appeal to "natural justice" in defence of their actions, they were liable to do what they liked and then call it

## JUSTICE AMONG NATIONS

justice. Further, it is impossible to claim that everything that man's nature seems to ordain is right; this might lead to the justification of all sorts of barbarous horrors. Grotius tried to get out of the difficulty by claiming that man's nature led him to live in society with his fellows, and therefore to discover ways of living with them in peace and harmony. In a noble passage he claims that "Rights, even unsupported by force, are not destitute of all effect; for Justice, the observance of Rights, brings security to the conscience, while injustice inflicts on it tortures and wounds, such as Plato describes as assaulting the bosoms of tyrants." But the argument from human nature, taken as a whole, seems to confuse nature with reason. Man's nature contains many elements, some social and others anti-social. By his reason he can judge how to foster and to discipline these various elements so that he may live in peace with his fellows. It is reason then, not undisciplined nature, that bids him develop systems of law and justice. Unfortunately, in rejecting the law of nature in favour of customary law, some jurists, at least, seem paradoxically to have tied international law down to an outworn custom, instead of leaving it free to the development of reason and conscience. Dr Lawrence achieved the happy mean—in theory at least—when he insisted that only that which could be shown to be actual usage must be regarded as law, but that on all doubtful points it was the duty of jurists to "put ethical considerations prominently forward." In doing

## JUSTICE AMONG NATIONS

this, says Dr Lawrence, the jurist "himself legislates, for he creates the opinion that is really supreme. And this he does without deserting the positive method and confounding the ideal with the real." And Mr Delisle Burns writes: "We no longer go to the 'law of nature' as the basis for International Law, but only to the consent of the parties, and though we have gained by the suppression of an abstract nature, we have lost something by not concerning ourselves with that morality which, in some sense or other, must be what is partly embodied in the Law."<sup>1</sup>

I have attempted to rebut Professor Holland's scepticism by showing the reality and vitality of international law, but it is still necessary to consider his statement that international law has no proper arbiter; and the further criticism, that a true law must be backed by force.

Professor Holland's statement that international law has no arbiter but public opinion was scarcely accurate, even when he wrote it. In the nineteenth century, it is true, there was no established arbitration tribunal, though States frequently resorted to impartial arbiters instead of submitting their disputes to the so-called arbitrament of the sword. In 1899, however, the first Hague Conference established a permanent panel of arbitrators, with settled rules for arbitration procedure. This tribunal had been in existence for ten years when Holland's eleventh edition, from which I have been quoting, was published. So just were the

<sup>1</sup> *The Morality of Nations*, chap. i.



## JUSTICE AMONG NATIONS

decisions commonly reached by these arbitration tribunals felt to be that, by 1910, a number of general arbitration treaties had been concluded between States, providing for the submission of all disputes that might arise in the future to arbitration, except such as might involve honour, independence, or vital interests.

The development of international arbitration is one of the most romantic episodes of the history of the nineteenth century. That century is often regarded as a great age of discovery; and so indeed it was; and one of the greatest of all its discoveries was a rational way of settling international disputes. Instead of submitting differences to the barbarous and disgusting ordeal of finding out which State could in the shortest time kill the larger number of innocent subjects of its opponents and destroy the larger amount of nature's beauty and man's handiwork, a method was discovered of investigating into the truth of the matter in dispute, and then deciding the issue according to truth and justice. Sir Thomas More long ago made his Utopians prefer victory over their enemies by cunning rather than by war—preferring to use man's weapon, his wit, to the animal-like weapon, brute force. How much more excellent to defeat the enemy by proving to his satisfaction, before an impartial judge, that you were right and he wrong; or, possibly more excellent still, to confess to him, after the impartial inquiry, that he was right and you were wrong! The tonic of a frank confession of error

## JUSTICE AMONG NATIONS

may do a State far more good than the much-vaunted tonic of war:

Modern arbitration is commonly said to date from the Jay Treaty, between Great Britain and America in 1794; and it is poetically just that the historic origin should be connected with the American-Canadian frontier. As one glances through the lists of arbitration cases, from 1794 to 1914, the eye is frequently arrested by a case or cases between Great Britain and the United States. To-day we take it for granted that any difficulties that arise between the two great English-speaking peoples should be settled peaceably. It seems to be in accordance with nature. But if we turn to the history of Anglo-American relations in the past hundred years we can see that this is not so; and we may well be astonished at the number of grave crises and outbreaks of national passion that have been safely weathered. Fisheries disputes, recurring with more or less acrimony decade after decade, down to so recent a date as 1907; aggressive fortification of the Canadian frontier after the war of 1814; boundary disputes, long protracted, and once, in 1844, when the long North-West frontier had to be settled, and a war-like President was elected at the critical moment, almost leading to war; acute difficulties during the American Civil War (1861-65), when many influential Englishmen wanted to help the South; the bitter controversy over the *Alabama* case; a sharp dispute over the frontier between Venezuela and British Guiana in

## JUSTICE AMONG NATIONS

1896; all these things have come and gone. The war-like President Tyler gave way over the North-West frontier in 1846 without fighting; and although the arbitral tribunal that finally considered the *Alabama* case awarded over three million pounds damages against the British Government, the sum was loyally paid. How was it that with all this friction war never came? Not because blood is thicker than water—unhappily, history does not support that proverb—but partly because reason was growing stronger; and still more because the North American frontier was unarmed. There were no forces whose mobilisation might have precipitated a catastrophe—as they did in Europe in 1914. The Rush-Bagot agreement of 1817, by which the statesmen of this country accepted Secretary Monroe's proposal to limit armed vessels on the Great Lakes to revenue cutters only, and, later, the agreement not to fortify the thousand-mile land frontier, have probably done more for international sanity and the development of arbitration than any other friendly agreements between States.<sup>1</sup>

Turn to another continent, Africa; how often is it recognised that in the great "grab for Africa" of the European Powers in the 1880's and '90's not one of the score or so of serious boundary disputes between the rival robbers led to

<sup>1</sup> See *The Cambridge History of British Foreign Policy*, esp. I. pp. 535-42; II. chaps. vi. and xiii.; III. pp. 54-71, 222-28, 294-99.

## JUSTICE AMONG NATIONS

war? All were submitted to arbitration; between France and Britain, Germany and Britain, Portugal and Britain, France and Germany, and so on. Perhaps it is hardly decent to find any good in such friendly distribution of the spoils; but is it not proverbial that thieves quarrel over the loot? If they had fought for it in this case not only would Europe have suffered, but the sufferings of Africa would have been far greater than they have actually been.<sup>1</sup>

I have mentioned that the general arbitration treaties concluded at the beginning of this century excepted cases involving honour, independence, and vital interests. The cynic naturally points out that such an exception vitiates the whole treaty, for these things cannot be defined. It is equivalent to excluding all those quarrels that arouse angry passions—in fact, the very cases in which it is most urgent that an impartial judge should look at them quietly. In reply, we are assured that this classification is intended to exclude only those cases that, being political, not legal, are not capable of being settled by a legal arbitration. If that is intended it is very badly expressed. Why not say non-legal disputes, if that is what is meant? What case could have touched national “honour” more closely than the Dogger Bank incident of 1904, when Russian warships fired on the Hull fishing fleet? Did Britain go to war? No; because Mr Balfour’s Government was wise enough to see that it was far better

<sup>1</sup> Cf. Evans Darby, *International Tribunals*.

## JUSTICE AMONG NATIONS

to "vindicate justice" before an impartial tribunal, and to obtain compensation for the relatives of the fishermen, than to send thousands more Englishmen to the bottom of the sea—a process which would have proved nothing except the power for evil of the *Daily Mail*. People would still to-day be arguing whether there were Japanese destroyers in the North Sea, as the Russians alleged, or not. As it is, we all know that there were not; the investigation of an impartial tribunal proved it.

Just before the war of 1914 the American Government began to negotiate the so-called Bryan Treaties, by which the States concerned agreed not to go to war until any dispute that had arisen between them had been submitted to a permanent commission predominantly neutral in character. This provided a "cooling-off" period. Treaties of this kind were negotiated with most of the Great Powers.

One of the most famous arbitration decisions of pre-war days was that treaty of 1902 between Argentina and Chile, that left behind it, high up in the Andes, not endless rows of little wooden crosses, but a great stone figure of Christ holding a single Cross. The story of the Christ of the Andes is justly renowned; but the tale bears repeating again; how the boundary between the two countries had been in dispute; how bitterness increased and military forces were developed, until an Argentine priest, moved with a diviner passion, went forth among his fellow-countrymen preaching peace. The peace movement was soon

## JUSTICE AMONG NATIONS

reciprocated in Chile, armaments were reduced, the boundary settled by arbitration, and the figure of Christ stands with the inscription, "Sooner shall these mountains crumble to dust than Argentines and Chilians break the peace which, at the feet of Christ the Redeemer, they have sworn to maintain." And this arbitration treaty is famous, too, because it was the first that was all-inclusive, allowing of no exception. The example set in South America was soon followed in Europe. In 1905 Denmark and Holland agreed to submit all disputes to the Hague tribunal; and before 1910 similar treaties were negotiated between Denmark and Italy, Holland and Italy, and Argentina and Italy.

And yet, in 1910, Professor Holland published the statement that international law knew no impartial arbiter.

Since the war, arbitration treaties have rapidly increased. According to Mr Arnold Forster, in 1917 there were already thirty-six all-inclusive arbitration treaties, mostly between small States, living at some distance from each other.<sup>1</sup> The League of Nations Secretariat, in giving a list of treaties of arbitration registered with it between 1918 and 1926, many of them renewals of pre-war treaties whose time-limit had expired, gives a much smaller number; but it is interesting to note that the all-inclusive treaties recently negoti-

<sup>1</sup> Mr Arnold Forster does not guarantee this number. His small book, *The Victory of Reason*, gives an excellently clear account of the progress of arbitration.

## *JUSTICE AMONG NATIONS*

ated are mostly between States that have common frontiers or other close connections. One is between Switzerland and Germany, one between Switzerland and Italy, one between Switzerland and Hungary, one between Germany and Sweden, and another is a common treaty among some of the Baltic States, but excluding Lithuania, namely, Esthonia, Finland, Latvia, and Poland. The Swiss-Italian treaty deserves special notice. It was negotiated at Rome in 1924, that is to say, with the active consent of Mussolini. It seems hardly fair, therefore, without very strong evidence, to accuse Mussolini of war-like designs on the Swiss Canton of Ticino.

The League of Nations, in June 1926, summarises the existing treaties of arbitration and conciliation thus: eighteen arbitration treaties that exclude questions affecting honour and vital interests; five that make no such exception; thirteen conciliation treaties, one of them involving a number of American States, but apparently none of them absolutely excluding final resort to war; seven combined arbitration and conciliation treaties, almost or entirely excluding war; and the four Locarno treaties, between Germany and France, Germany and Belgium, Germany and Czecho-Slovakia, and Germany and Poland, excluding war except in the face of invasion.

But, even so, by recounting these special treaties, less than half has been said. A number of recent general treaties provide for the submission in all cases of a certain class of dispute,

## JUSTICE AMONG NATIONS

such as those arising out of the Transit, Customs, Drugs, and Arms Conventions, to arbitration or judicial settlement. The League Covenant prohibits all of its fifty-six members from engaging in war against one another without first submitting their disputes either to arbitration, or to the Court at the Hague, or to investigation by the League Council or Assembly.

In 1924 an attempt was made in the Geneva Protocol absolutely to prohibit private war between nations, and to pledge every State to accept an arbitral or other pacific award in every dispute. This attempt failed for the moment, but it is certain to be renewed before long.

Most important of all the steps taken towards international justice has been the establishment of the Permanent Court of International Justice itself at the Hague. A great effort was made at the beginning to get all the members of the League to accept its obligatory jurisdiction in important classes of cases—practically all cases that are strictly legal; but that effort failed. The Great Powers would not go so far. Only they agreed to attach to its statute an Optional Clause, which any State may accept by making a special declaration. By signing this declaration, States bind themselves, reciprocally, to accept the obligatory jurisdiction of the Court in disputes suitable for judicial settlement.

The Hague Court has, already, a wonderful record of work; its decisions have been models of judicial impartiality and careful discrimination.



## *JUSTICE AMONG NATIONS*

It has given a number of invaluable advisory opinions on points of law or the interpretation of treaties, in response to requests from the League Council; and it has delivered several judgments. States involved in these opinions or judgments include Britain and France, the Allied Powers and Germany, Germany and Poland, Turkey and Greece, Turkey and Britain, Greece and Bulgaria.

Any State that really wants to prove its devotion to impartial justice can easily do so by accepting the obligatory jurisdiction of the "optional clause." Two dozen of the smaller States have done this; France has very nearly done it; but no Great Power has yet taken the plunge. Why does Great Britain hold back? First, as we saw, because of the incompleteness of international law. I think all that I have said shows how poor an answer that is. And in any case it is no reason for refusing to accept the jurisdiction of the Court for matters which, by definition, are capable of being settled in accordance with existing law. Two other reasons are advanced, first, that the British interpretation of maritime law in war time is not the interpretation accepted by other States; but, as to that, there would be no difficulty in making a reservation; also, that it cannot matter whether we take our disputes to the Hague Court or to the League Council. But it does matter very much. The decisions of the Hague Court are of binding force; the opinions of the League Council are not. And the League Council is open to political influence—as all the world knows after

## JUSTICE AMONG NATIONS

the shocking exhibition of last March. The Hague Court is not open to such influence. In short, the decisions of the Hague Court are binding and impartial; the opinions of the League Council may be neither. It is only fair to add that the League Council is more and more frequently referring every legal dispute that comes before it to the Hague Court for an advisory opinion, and then basing its award on that opinion.<sup>1</sup>

What of the forcible sanction for all this law and for these arbitral tribunals and conciliation commissions, and for the Hague Court? The international force is, admittedly, still lacking. But is it wanted? That States which insist on continuing their armaments should bind themselves never to use these armaments except when called upon by the League of Nations to uphold international law would, in my opinion, be a step in the right direction; it would, that is to say, be a step towards general disarmament, and away from the lawless use of armaments from which we have too long suffered. But I do not believe that it would be a tolerable stopping place. Police are necessary to enforce municipal law against occasional law-breakers or even against gangs of ruffians; but in civilised countries no reputable citizen now wants the military to be called in to suppress civil disturbances or labour troubles. Disputes of this character are settled, or ought to

<sup>1</sup> An impressive summary of the actual jurisdiction of the Hague Court may be found in the first *Annual Report* (1922-25), pp. 129-44.

## *JUSTICE AMONG NATIONS*

be settled, by negotiation and agreement, without any threat of force in the background. If this is true for parties or classes within the State, it should be no less true for the world of States. In spite of certain dictatorships, I think we may say that a criminal government is almost unthinkable to-day; whole nations do not need threats of coercion; they need assuring of the respect and confidence of their neighbours. Once disarmament has been achieved, at any rate, talk of forcible international sanctions to check aggression must cease. The supposed parallel between the necessary coercion of lawless individuals in the State and the necessary coercion of States in the family of nations is false. The world has believed in the effectiveness of force for too long. It has suffered grievously because of its belief. The time has come to end these pagan politics, and to substitute a policy of mutual confidence, working through co-operation, and relying on the public opinion of humanity as its sanction. This is the way to international justice.

Enough has been said, I think, to show that the international anarchy is a thing of the past. The last vestige of an excuse that any Government may have had for reserving the right to make war in its own discretion has gone. Any Government that upholds that right is in effect insisting that it will, when it likes, take the law into its own hands, and be judge in its own cause. Such an attitude is a complete negation of justice. Good citizens must see to it that their Govern-

## *JUSTICE AMONG NATIONS*

ments give up this claim; they must refuse to support any Government that makes war; they must not allow themselves to be tricked into supporting a war policy by the clever propaganda of a pagan press. It is never right to support a policy that means the destruction of our fellow-citizens, and that cuts the bonds that unite us with the people of every land. The first duty of every good citizen is to humanity. The State also has a duty to humanity; we must see that our State performs its duty.

Thus we return to the fuller conception of justice. We have seen that justice, as a rule of impartial treatment between man and man and State and State, has been making rapid progress in recent years; but it is not fully established. We are far, indeed, from the full fruition of justice as a principle of universal comradeship. If in recent years we had recognised the people of France as one group of the great human family to which we all belong, perhaps we should long ago have shown a more practical sympathy with their financial difficulties; if we had seen Germany as a brother nation we should long ago have confessed our share in the common guilt of the Great War. However deeply convinced we may be that Russia's misery has been largely due to the folly of her rulers, past and present, the Russian people are still our fellow-men. A real union of minds and a real willingness to sacrifice ourselves on behalf of others was apparent amongst the peoples allied together on both sides in the early months of the

## JUSTICE AMONG NATIONS

war, and a yet finer example of devotion, perhaps, has been shown by those who have recently given themselves in service to the peoples of other lands—in Europe, Asia, or Africa—not with condescending pity, but inspired by true reverence and brotherly love. This work, unfortunately, has been done hitherto mainly by individuals or groups; nations have not yet learnt the fact of international brotherhood. But recent years have shown us the sight of Governments co-operating together to reconstruct the economic life of Greece and Bulgaria, and to combat disease in Eastern Europe and Central Africa; this is international comradeship at its best.

### V. REAL JUSTICE

I suppose many children who have read Kingsley's *Water Babies* have been surprised, perhaps delightfully surprised, to discover that Mrs Do-as-you-would-be-done-by was really the same person as Mrs Be-done-by-as-you-did. I think when I was a child I was a good deal perplexed by it; but it seemed, nevertheless, a rather satisfactory conclusion, and I don't think I bothered myself much to understand why I found it satisfactory. Modern children are perhaps more sophisticated and take it all as a matter of course, even as an obvious truism. But if so, I think they are in advance of their elders, most of whom still seem to keep the two ladies in separate compartments of their minds, with a strong preference for

## JUSTICE AMONG NATIONS

Mrs Do-as-you-would-be-done-by where their own interests are concerned, and for Mrs Be-done-by-as-you-did in the organisation of society and the enforcement of the law—it being taken for granted that none of those who are concerned for the enforcement of law expect it to be enforced at their own expense. The desire for retribution seems to be very deeply rooted in the human heart; indeed, where fear is, there is also cruelty and a zeal for punishment. And some of the most famous of political thinkers, including Machiavelli and Thomas Hobbes, have believed that fear was the most powerful social instinct of man. They could point to a great deal of evidence for this view; and anyone who rejects the fear instinct altogether is, I think, blinding himself to the weakness and baseness that all honest men must surely admit they know within themselves. There have been occasions, I am afraid, in most of our lives, when for the moment terror has been a more potent influence upon us than anything else. But it may be doubted whether any man has been cured of his evil mind by violent coercion. Restraint of crime may sometimes be the immediate necessity, but if we are hoping to cure the criminal we must look for other means. Too often, unfortunately, public opinion has cared only for protecting the community, and has not considered the cure of the criminal. Nor do threats of ferocious penalties always restrain men from crime. Modern history shows in many instances that crime decreases as clemency in-

## JUSTICE AMONG NATIONS

creases. The reform of Milanese criminal law near the end of the eighteenth century, and of British criminal law early in the nineteenth; the abolition of capital punishment in Holland and Scandinavia and elsewhere: none of these things have resulted in more crime: on the whole in each case there has been less. This is no always to be regarded as cause and effect; the same enlightenment that encourages clemency, also discourages crime.

It is not fear that makes good citizens. We are proud to be citizens of England, to enjoy a status made glorious by many great men; and we recognise from their example that this status carries with it great social obligations. So, too, we have to recognise the fact that we are men, citizens of the world, and we must proudly accept the obligations of our human heritage. We have not yet seen this truth in the full light of day; but the dawn has come.

Mr Norman Robinson, in his book on *Christian Justice*, points out that the retributive method of justice practised by our law courts is based on a false conception of society. It assumes, first, that the whole responsibility for a crime rests upon the individual criminal, and, secondly, that the punishment inflicted upon him affects him alone. Both ideas are untrue. Almost all crime is due in a measure to social environment or hereditary weakness, and almost every punishment inflicted on a criminal brings affliction to his family, and makes it more difficult

## JUSTICE AMONG NATIONS

for them to rise out of bad conditions. It is not only that severe legal penalties do not convert the criminal, nor that they fail to reduce crime, nor that they fail to protect society—they are not even inflicted on the real criminals. For society itself is the criminal. "Adopt an attitude of selfish detachment from your fellows," writes Mr Robinson, "and you will only find injustice in the ordering of life. Frankly recognise your fellowship with them and take your share of 'burden-bearing' in the family, and you will not fail to discover justice." And again: "There is no such thing as an individualistic justice in life, because there are no isolated individuals. There is a family life and therefore a social justice based on fellowship." From this sense of identification with one another we have not far to go before we stand in awe before the Cross of Him who, as we are told, "his own self bare our sins in his body on the tree." If such love does not win the evil heart, nothing will. What is called vicarious suffering must always have a potent influence. In Gandhi's presence, a young disciple of his spoke sharply and contemptuously of a man who was opposing Gandhi's work. The master was ashamed to find that he had taught his young friend the duty of harmlessness and self-discipline so ill, and he fasted for a day as a penance. One can imagine something of the agony the young disciple endured that day. I think he has kept a very sharp curb on his tongue and on his thoughts ever since.



## JUSTICE AMONG NATIONS

It is remarkable that the world is so slow to learn what the wise men of all ages have seen—that the evil mind in men is never converted to good by coercion and force, but that it may be reached by trust and friendship. Erasmus, at the beginning of the sixteenth century, suggested that even the Turks were more likely to become peaceable if they saw Christians really living as Christ lived, instead of meeting them only as implacable enemies.<sup>1</sup> Roger Bacon, three hundred years earlier, seems to have expounded the same view. Even Christ, it is true, did not convert the self-righteous, hard-hearted Pharisees, but His love and confidence were sufficient to cast out the devilish terrors that had taken possession of many an unfortunate wretch whom we should hastily lock up in prison, or at best consign to an asylum. Perhaps if we were more conscious of what it is like to be born in a city tenement, or in a farm-labourer's cottage, it may be with drunken parents, perhaps inheriting some venereal disease, always hungry and neglected, attending a noisy, crowded school, taught by ill-paid teachers, who may be so distracted by family cares that they cannot give the time, even if they have the ability or the will, to care for the individual children they teach—if these had been the circumstances of our upbringing, we might be less ready to deal severely and drastically with those we call "criminals." Or, on the other

<sup>1</sup> See Froude, *Life and Letters of Erasmus*, and Erasmus, *Querela Pacis*.

## JUSTICE AMONG NATIONS

hand, if we had been children of parents of great wealth, who did not live together, who lived as if luxury and display were the best things in life, who did not trouble themselves with the welfare of their children, but allowed them everything they ever asked for—if we had known what that sort of life was like, we might be more charitable towards the sins of the idle rich. Most of us have little imagination. We give too little serious thought to the effect on others of the organisation of society that happens to suit us. It suits us and our friends well enough; why, we are inclined to ask, cannot everyone else live the same orderly quiet lives that we lead? Perhaps we are the modern Pharisees.

In the course of this lecture I have avoided speaking much of rights, and I have done this intentionally. For it seems that Mazzini spoke wisely when he declared that the revolutionary movement had gone much too far in emphasising rights to the neglect of duties.<sup>1</sup> And I am afraid the warning of Mazzini has been disregarded. Justice, we have said, consists in giving to every man his due, or, if you like, his rights. I do not quarrel with this definition; but I challenge the common interpretation of it. For it seems to me that most men, when they hear it said that justice consists in giving every man his rights, ask themselves, not, Am I denying any man his rights?

<sup>1</sup> Mazzini meant, of course, the intelligent performance of duty to the human community, not blind obedience to an omnipotent State.

## *JUSTICE AMONG NATIONS*

but, What rights have I that are denied me? and he seems to find a great many. And thereupon he goes out resolved to wrest from society those rights he thinks are his due—either for himself alone, or, more disinterestedly and more commonly, for his own group or class or nation. Indeed, he may involve himself in great sacrifice of time and strength and self-interest in order to secure the rights of his fellow-workers or his fellow-countrymen. Such self-sacrifice must be regarded with proper respect; but it often fails in its purpose, because it arouses similar feelings in opposing classes or nations, who band themselves together to defend those rights of theirs which seem to be imperilled. The war of rights with rights breeds wrong and injustice. I am not denying that much of the economic progress of underpaid and exploited workers in recent times has been secured by this process. But just as nationalism, based on “sacred egoism,” leads imperceptibly to imperialism, so too does the social uprising tend to become economic tyranny.

It may be asked of me, What right have you, a comfortable member of the middle classes, to speak thus? And I would reply that I have no right, except the right—or the duty—of every man to say what he believes to be true. But if anyone supposes that what I have just said is aimed chiefly at Trade Unions, he is mistaken. That it is a criticism of much Trade Union policy I daresay; just as it is a criticism of much so-called patriotism. But it is far more than that.

## JUSTICE AMONG NATIONS

It is a criticism of the present order of society, in so far as that order rests upon the principle that man is naturally selfish, and that it is natural and right for him to compete with his fellows. That selfishness is natural to man cannot be denied; but there are many other qualities born in him too; one of these is the capacity for unselfishness, or love for his fellows. The selfishness in man has to be disciplined, directed, developed, changed into single-minded pursuit of all that is good, not into a cruel competition with his fellows for the spoils of the earth.

If society is to be reformed, those who are most favoured by the present system must give the lead. The only way to persuade Trade Unionists that they need not fight for better conditions of life is for those who have better conditions already to prove that they really want to share the good things of life with their fellow-citizens. In other words, those who are reasonably well-off must be prepared to face self-sacrifice. Of course it is easier to say this than to practise it. Many of us might find self-sacrifice comparatively easy if we had no one but ourselves to think of. But those who have dependents, especially children, to think of, cannot so easily reduce their standard of living. And yet I believe we must face the fact that by this road alone are we likely to find social and international justice.

But what may be very difficult for the individual to practise may be easier for the community, guided by wise statesmanship, to approach to-

## JUSTICE AMONG NATIONS

gether. There is a bad habit amongst us of reviling statesmen and politicians, as if they were all self-seeking opportunists. People are apt to live up (or down) to what is expected of them. If we are always suspicious of our political leaders, we cannot be surprised if they become embittered and selfish. If we trusted them more, perhaps they would prove themselves worthy of our trust. So it is in no cynical spirit that I would suggest that those who aspire to serve the community in Parliament, in county or municipal council, in the civil or diplomatic service, should found their policy on the principle that all our social life is a life of co-operation and mutual service, and should base their appeals for support on the ground of the general good, and not of sectional or national self-interest.

It has been my duty for some years now to study international politics rather closely. This study has led me not to a cynical contempt for the whole race of politicians, but to a high respect for all those who struggle to uphold their principles through a maze of conflicting forces that are enough to baffle the wisest. What the world seems to need in this age is a greater number of men and women who will go, open-eyed, into the arena of politics, counting reputation, high office, and public honour of no account, but caring only to promote true justice. We have been fortunate in this country that so many men and women have given their lives to this work. In his novel, *Rough Justice*, Mr C. E. Montague depicts such

## JUSTICE AMONG NATIONS

a man, putting aside the glittering honours that come the way of the good partisan, but quietly, almost secretly, giving his life to help his fellow-men, because he could reverence what he saw in the everyday life of his neighbours—whether they were watching a football match or “carrying on” in the Great War. Such men are worthy to be called “Guardians” in the Socratic sense. Some democrats may find Mr Montague’s novel unsatisfactory, because its heroes are members of an old aristocratic family with all the advantages wealth and position can give. Certainly we do not want the servants and leaders of the State to be all drawn from one class. But I believe it is right to expect the work of government to be undertaken by selected wise men who have a sense of public duty, rather than by demagogues who respond to the clamour of the mob. How to provide a sure method of selecting such men is extraordinarily difficult, but it ought to be easier if the number to choose from is greater.

True servants of the community expect to be sustained by the intelligent support of their fellow-citizens. If we want our Government to carry out an enlightened policy, we must first enlighten ourselves: narrow partisanship will not do. Nor is goodwill alone sufficient. Every citizen has some duty of learning about the world in which he lives; and the more he can learn at first-hand the better. We can also help the servants of our community if we look to them, not to gratify every selfish desire of the

## JUSTICE AMONG NATIONS

class we belong to, nor to show their patriotism by doing injury to other nations, but by expecting them to follow their conscience, and by respecting them the more when they set themselves to carry out some difficult and unpopular task.

We are gradually learning that government does not mean the imposition of the will of a few strong or ambitious men, or even the will of the majority, upon a reluctant people; legislation, the passing of new laws, signifies less and less, administration of law and justice more and more.<sup>1</sup> Government is a science, and the laws of that science are the laws of human well-being—moral as well as economic; the true governors are those who apply their knowledge of these laws to the service of the community. In the sphere of international government we have now, in the Secretariat of the League of Nations, a body of men and women, representing the aspirations of many different cultures, whose task it is, not to impose laws upon the world, but to administer that justice which consists in harmonious co-operation. But the battle is not yet won. Whilst in this country we see the miners driven down into the pits again by the force of economic necessity, with the bitterness of defeat in their hearts, from other lands come tales of violence and exploitation that make the English workers' lot seem by comparison almost blissful. Exploitation and antagonism, springing

<sup>1</sup> Cf. C. Delisle Burns on *International Administration*; *Year-Book of International Law*, 1926, pp. 54-72.

## JUSTICE AMONG NATIONS

out of ignorance and fear, still struggle in the world against helpful co-operation, based on knowledge and confidence. Laocoön and his sons still strive against the serpent; every man and woman must help or hinder. Let us not cry "Peace, peace" where there is no peace; "universal peace," the statesmen of the world have told us, "can be established only if it is based upon social justice";<sup>1</sup> that is true.

The citadel of justice will not be taken by violence; but if there are, as I believe there are, men and women in this and other countries who will set aside more attractive or remunerative tasks in order to train themselves to be servants of the community, we need not fear for the future of the human commonwealth. Such training will involve hard self-discipline of mind and body, imagination and sympathy in appreciating varied human needs; courage to endure abuse, misunderstanding, and unpopularity; infinite patience; and a deep faith in man's divine possibilities.

<sup>1</sup> Treaty of Versailles, Part xiii, section 1, preamble.



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